

CALIFORNIA COASTAL COMMISSION

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M-12a

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Hearing Date: June 7, 1999
Item Number: M-12a

STAFF REPORT: APPEAL SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Santa Barbara

DECISION: Approval of CDP No. 98-CDP-241 on November 9, 1998

APPEAL NO.: A-4-STB-98-321

APPLICANT: ARCO Oil and Gas Company

PROJECT DESCRIPTION: Excavation of approximately 200-500 cubic yards of contaminated soil for offsite disposal and removal of remaining aboveground oil field structures.

PROJECT LOCATION: The 208-acre ARCO Dos Pueblos golf course project site, located approximately 3 miles west of Goleta, Santa Barbara County (Exhibits 1 & 2).

APPELLANTS: Santa Barbara Urban Creeks Council, Nathan Post, Bob Keats, Tom Philips, and the Santa Barbara Chapter of the Surfrider Foundation

**SUBSTANTIVE FILE
DOCUMENTS:** See Appendix A

STAFF NOTE

Request for Permit Extension

There are four items on the Commission's June hearing agenda that relate to Coastal Development Permit No. A-4-93-154 (ARCO Oil and Gas Company) (Dos Pueblo Golf Links), approved by the Commission on November 16, 1994: (1) ARCO's Request for Permit Extension (A-4-93-154-E1); (2) ARCO's Application for a Permit Amendment (A-4-93-154-A2); (3) Appeal by Santa Barbara Urban Creeks Council, Nathan Post, Bob Keats and Tom Phillips (Appeal No. A-4-98-321); and (4) Appeal by Nathan Post, Bob Keats and Tom Phillips (Appeal No. A-4-98-332). In the staff report prepared for ARCO's Request for Permit Extension, Commission staff has recommended that the Commission object to the request, thereby denying the extension. If the Commission denies the extension request, ARCO's permit application would be set for a full hearing as though it were a new application, pursuant to 14 C.C.R. section 13169(a)(2). The hearing on the amendment request and the two related pending appeals would then be no longer considered on the Commission's June Hearing Agenda.

Modifications to Originally Proposed Remedial Action Plan

Between the time that this substantial issue determination was originally scheduled for hearing on January 15, 1999, ARCO has modified the remedial action plan to:

- Specify that no grading will be conducted seaward of the railroad tracks during the rainy season.
- Clarify that the wetland habitat located at the former tank farm area will be restored and enhanced following soil remediation work in this area.
- Leave in place the concrete retaining wall originally proposed for removal and to correct site drainage to insure the continuation of the small wetland adjacent to the wall.
- Increase by 0.51 acre the wetland mitigation area.
- Include the mitigation measures contained in the May 3, 1999, biological assessment to protect the California red-legged frog and the tidewater goby.

These changes to the proposed remedial action plan address some of the concerns raised by the appellants.

Summary of Staff Recommendation

The staff recommends that the Commission find that the grounds upon which the appeal was filed raise **No Substantial Issue** under the policies of Santa Barbara County's certified Local Coastal Program.

Synopsis

This appeal involves the remediation of petroleum hydrocarbon contaminated soil and mercury contaminated soil at the former Dos Pueblos oil and gas production site in Santa Barbara County. Remediation of contaminated soil at this site is one component of a larger ARCO Dos Pueblos

Golf Course Project that was approved by the Coastal Commission on appeal in 1995. The Commission's 1995 approval did not include the soil remediation component, however.

The ARCO Dos Pueblos Golf Course Project is comprised of three basic components, including (1) abandonment/removal of oil and gas facilities, (2) site assessment and remediation, and (3) golf course grading and construction. The project subject to this appeal is the site remediation portion of the overall golf course project.

ARCO Golf Course Permit History

On August 17, 1993, the Santa Barbara County Board of Supervisors granted to ARCO Conditional Use Permit (CUP) No. 91-CD-085 for the development of the ARCO Dos Pueblos Golf Course Project. ARCO's project description included the abandonment of oil and gas facilities, site assessment and remediation, and golf course construction. However, abandonment, site assessment, and remediation were not described in sufficient detail for final authorization under the CUP. The CUP was appealed to the Coastal Commission on September 17, 1993. On November 17, 1993, the Commission found that the appeal raised substantial issues under the County's LCP and denied ARCO's permit application in a de novo hearing on the merits of the project. ARCO subsequently modified the project to include additional public access and habitat improvements and submitted it to the Commission for reconsideration. On February 8, 1995, the Commission granted final approval of CDP No. A-4-STB-93-154 for the modified project with special conditions.

Abandonment of the remaining oil and gas facilities located on the site and any necessary site cleanup/toxics remediation is not authorized under CDP No. A-4-STB-93-154. The permit required ARCO to obtain a separate locally issued CDP for the site cleanup and abandonment. Accordingly, ARCO obtained a County-issued CDP for the first phase of abandonment and completed this work in 1997. Following completion of site assessment and the first phase of facilities abandonment, ARCO applied to the County to excavate contaminated soils.

Local Government Action Subject to Appeal

On November 9, 1998, the County Planning and Development Department granted to ARCO CDP No. 98-CDP-241 for the excavation and off-site disposal of 200-500 cubic yards of petroleum hydrocarbon and mercury contaminated soils. The permit also authorized the removal of remaining on-site oil field structures. The project will involve the removal of contaminated soils from two newly formed wetlands located within the bermed containment areas surrounding two former tank farms. ARCO proposes to mitigate the impacts to these wetlands at a 1.5:1 ratio through implementation of a County-approved Wetlands Enhancement/Restoration Plan.

Appeal

Two appeals were filed with the Commission on November 25, and November 30, 1998. One appeal was submitted by the Santa Barbara Urban Creeks Council, and the second by Nathan Post, Bob Keats, Tom Philips, and the Santa Barbara Chapter of the Surfrider Foundation.

The appellants contend that the proposed clean-up project would degrade the biological productivity and quality of coastal waters due to (1) transport of contaminated sediments from the

remediation sites through runoff and erosion, and (2) use of the herbicide Rodeo® for weed control in the wetlands restoration plan, and therefore does not conform with the policies of Santa Barbara County's certified local coastal program (LCP).

Staff Recommendation

Because the project involves only a minor amount of grading on unsloped terrain, the erosion potential is very low. Nevertheless, the County permit prohibits grading during the rainy season unless erosion control measures are implemented. The Best Management Practices (BMPs) required by the County are fully consistent with the Commission's procedural guidance manual concerning polluted runoff. Additionally, ARCO has revised the remedial action plan to specify that no grading will occur seaward of the railroad tracks during the rainy season. The Commission staff thus believes that the project, as conditioned by the County, does not raise a substantial issue under the County's LCP.

Rodeo® is approved for use in wetlands by the U.S. EPA and its use in the proposed project has been approved by the US Fish and Wildlife Service and the California Department of Fish and Game. The County permit includes limitations on the methods and conditions under which Rodeo® may be used. These conditions are consistent with EPA recommendations. The Commission staff therefore does not believe that the proposed use of Rodeo®, as conditioned by the County, raises a substantial issue under the County's LCP.

Therefore, the staff recommends that the Commission find that the appeal raises **No Substantial Issue**.

1.0 Background

1.1 Location/Project Description

1.1.1 Location

The ARCO Dos Pueblos site consists of 208 acres on the coastal bluff, 1.5 miles west of the Winchester Canyon exit of Highway 101, in Santa Barbara County. The site is bordered to the north by Highway 101, to the east by Eagle Canyon Creek, to the south by the Pacific Ocean, and to the west by the Naples property.

1.1.2 Project Overview

Historically, the Dos Pueblos property was used for dry farming and grazing, however the primary use was oil and gas production. The on-site petroleum production facilities operated for approximately 50 years, but were deemed a non-conforming use with the adoption of the County's South Coast Consolidation Planning Area Policy. The site was originally zoned Coastal Dependent Industry (M-CD), but was rezoned Agriculture (AG-II-100) in 1991. Shortly thereafter, ARCO applied for a Conditional Use Permit to abandon the oil and gas facilities, and construct a golf course as further discussed in the Permit History section below.

Abandonment of the oil and gas facilities was subsequently divided into several phases at ARCO's request. The first phase, involving abandoning the non-producing wells and removing

aboveground equipment was approved by the County and work was completed in 1997. The work that is the subject of this appeal includes the removal of remaining on-site facilities and soil remediation. The final phase, currently under County review, will involve the abandonment of off-site facilities.

1.1.3 Site Assessment Results

A November 1997 Site Assessment Report identified the presence of 200-500 cubic yards of petroleum hydrocarbon contaminated or mercury contaminated soils at the former oil and gas production sites at levels that require remediation by the County PSD, EPA, and the Regional Water Quality Control Board (RWQCB). Five soils samples contained greater than 200 mg/kg total volatile petroleum hydrocarbons (TVPH). One soil sample collected contained total extractable petroleum hydrocarbons (TEPH) concentration above 20,000 mg/kg, and one soil sample collected at the former gas chiller contained mercury concentrations greater than 1mg/kg. No contamination of groundwater was found.

1.1.4 Remedial Action Plan

In March 1997, ENSR (ARCO's consultant) prepared a Remedial Action Plan (RAP) proposing to excavate the contaminated soils. Three categories of contaminated soils are established in the RAP.

Category 1: Known Areas of Impacts Above Cleanup Levels - Abandonment Phase

Established cleanup levels for this project are 5,000 ppm (<C20) and 20,000 ppm (>C20) for TVPH/TEPH and 1 mg/kg for mercury. Category 1 soils consist of specific areas the Site Assessment identified as needing to be removed.

Category 2: Known Areas of Impacts Below Cleanup Levels - Abandonment Phase

These are areas where the golf course grading will enter into previously identified contamination soils that do not trigger action levels. These soils would not pose a risk to human health or groundwater, but should not come in contact with ecological receptors. Therefore, ARCO will either excavate until the top two feet of soil is clean, or place a two-foot buffer of clean soil on top of the contaminated soils.

Category 3: Unknown Areas of Impacts - Golf Course Phase

This category covers any contaminated areas that could be encountered during golf course grading and that have not been identified by the Site Assessment.

By letter dated June 18, 1998, the PSD approved the Remedial Action Plan with modifications proposed by PSD, CDFG, and the RWQCB.

1.1.5 Proposed Remedial Action

The project approved by the County under CDP No. 98-CDP-241 and subject to this appeal is for the removal of Category 1 soils only. Remediation of Category 2 and 3 soils will be subject to

future County review and approval as necessary. For a detailed project description, please see the attached County Substantial Conformity Determination 91-CP-085 (Exhibit 3)

1.2 Permit History

On August 17, 1993, the Santa Barbara County Board of Supervisors granted to ARCO Conditional Use Permit (CUP) No. 91-CD-085 for the development of the ARCO Dos Pueblos Golf Course Project. ARCO's project description for this permit included the abandonment of oil and gas facilities, site assessment and remediation, and golf course construction. However, abandonment, site assessment, and remediation were not described in sufficient detail for final authorization under the CUP. The CUP was appealed to the Coastal Commission on September 17, 1993¹. On November 17, 1993, the Commission found that the appeal raised substantial issues under the County's LCP and denied ARCO's permit application in a de novo hearing on the merits of the project. ARCO subsequently modified the project to include additional public access and habitat improvements and submitted it to the Commission for reconsideration. On February 8, 1995, the Commission granted final approval of CDP No. A-4-STB-93-154 for the modified project with special conditions. The Commission's CDP incorporates by reference all of the special conditions imposed under the County's CUP.

Abandonment of the remaining oil and gas facilities located on the site and any necessary site cleanup/toxics remediation is not authorized under the permit. The permit required ARCO to obtain a separate locally issued CDP for the site cleanup and abandonment. Accordingly, ARCO obtained a County-issued CDP for the first phase of abandonment and completed this work in 1997. Following completion of site assessment and the first phase of facilities abandonment, ARCO applied to the County for authorization to conduct site remediation.

1.3 Local Government Action Subject to Appeal

As discussed in Section 1.1.3 above, site assessment was completed in 1997. Based on the results of the assessment, ARCO developed a remediation plan and applied to the County for approval of the remediation project. On November 9, 1998, the County Planning and Development Department granted to ARCO CDP No. 98-CDP-241 for the excavation and off-site disposal of 200-500 cubic yards of petroleum hydrocarbon and mercury contaminated soils. The permit also authorized the removal of remaining on-site oil field structures.

Removal of contaminated soils at the Active Tank Farm and Former Tank Farm will impact approximately 4980 and 2600 square feet, respectively, of artificially created, disturbed wetlands. Wetland conditions appeared in these areas due to soil compaction associated with removal of the oil and gas facilities, and an extraordinarily wet winter. In addition, removal of the concrete wall near Drainage #7 will impact approximately 3694 sq. ft (0.0848 acres) of artificially created, disturbed wetland.

¹ The project site is located between the first public road and the sea, and is therefore appealable to the Coastal Commission (PRC §30503(a)(1)).

To mitigate the impacts to all wetlands disturbed by remediation or abandonment activities, ARCO agrees to provide 1.5:1 onsite wetland restoration, enhancing 16,911 square feet of wetland in Tomate Canyon, on the western end of the site.

The Commission received notice of the County's final action on the remediation project CDP on November 12, 1998, and the Commission's appeal period ended November 30, 1998.

1.4 Filing of Appeal

Two appeals were timely filed with the Commission on November 25, and November 30, 1998. One appeal was submitted by the Santa Barbara Urban Creeks Council, and the second by Nathan Post, Bob Keats, Tom Philips, and the Santa Barbara Chapter of the Surfrider Foundation.

In accordance with section 13112 of the Commission's regulations, on December 4, 1998, the County provided to the staff a copy of the file containing all relevant documents and materials regarding the subject permit.

Pursuant to Section 30261 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. To satisfy this requirement, the Commission opened and continued a hearing on this appeal on January 15, 1999. The Commission granted the continuance to allow staff sufficient time to review the administrative record and to prepare this staff recommendation.

1.5 Appellants' Contentions

1.5.1 Santa Barbara Urban Creeks Council

The Santa Barbara Urban Creeks Council (UCC) contends that because grading for the removal of contaminated soils may be undertaken during the rainy season, the proposed project is inconsistent with policies of the Coastal Act and the Santa Barbara County Local Coastal Program (LCP)². The UCC appeal states specifically:

"The timing of this project should be delayed until after the rainy season for the following reasons.

- 1) The proposed project is on a coastal mesa, and runoff from the site goes directly into the ocean or into two creeks or into onsite wetlands.*
- 2) The County-approved erosion control plans do not work. We have substantial evidence of severe erosion and runoff from numerous construction sites during the last several rainy seasons, including the Santa Barbara Shores Remediation site, Glen Annie Golf Course (over 1,000 cubic yards of fill ran down Devereux Creek), and the Haskell's Beach (Hyatt Hotel) site. During heavy rain events, runoff cannot be controlled.*

² See Exhibits 4 & 5 for the entire text of the two appeals.

- 3) *Both the Santa Barbara Shores Soil Remediation project and the Haskell's Beach project grossly underestimate the actual amounts of toxic soils from the initial soil sampling and testing. There is reason to believe that more extensive contamination may be encountered on the ARCO site."*

The UCC's third contention concerns the adequacy of the 1997 Site Assessment Report. The site assessment was completed in 1997 under the review of the County and the Regional Water Quality Control Board, and is not within the scope of the County's CDP. Therefore, the site assessment is not before the Commission for decision on the subject appeal. Although the site assessment is not within the scope of the County action on appeal, Commission staff did review the Assessment Report. The staff believes that the site assessment was thorough and was conducted in accordance with the applicable regulatory standards. A summary of the Assessment Report is attached to the County's substantial conformity determination for the remediation project (Exhibit 3).

1.5.2 Nathan Post, et. al.

Nathan Post, Bob Keats, Tom Philips, and the Santa Barbara Chapter of the Surfrider Foundation contend that the County approved project is inconsistent with the Coastal Act and the LCP because (1) grading for site remediation during the rainy season could result in the transport of contaminated soils into coastal waters, and (2) use of the herbicide Rodeo® may adversely affect sensitive habitat.

On December 8, 1998, the Commission's South Central Coast Area Office received a letter from Nathan Post amending the appeal to include the following additional contentions: (1) the identification of newly formed wetlands on the site constitutes new information and changed circumstances since the approval of the coastal development permit for the ARCO Dos Pueblos Golf Course project requiring a supplement to the EIR for the project and a new coastal development permit, (2) soil from the golf course project grading may not be available to back fill the remediation excavations because the golf course project grading plan has not been approved, and (3) that a conflict of interest exists because certain employees of ARCO's remediation project consultant were previously employed by ARCO. However, because this letter was received after the appeal period had ended on November 30, 1998, these additional issues are not included in the appeal before the Commission.

1.6 Appeal Procedures

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff.

Furthermore, developments approved by counties may be appealed if they are not designated the “principal permitted use” under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development either does (in the case of a denial by the local government) or does not (in the case of an approval by the local government) conform to the standards set forth in the certified local coastal program or the public access and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission because the site is located between the sea and the first public road paralleling the sea.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. Typically, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a de novo hearing on the appeal, the applicable tests under sections 30604(b) and (c) of the Coastal Act for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

2.0. Staff Recommendation on Substantial Issue

Pursuant to Section 30625(b)(2) of the Coastal Act and as discussed in the findings below, the staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeals have been filed. The appropriate motion is:

2.1 Motion:

I move that the Commission determine that Appeal No. A-4-STB-98-321 raises **no substantial issue** as to conformity with the certified Local Coastal Program with respect to the grounds on which appeals were filed pursuant to Section 30603 of the Coastal Act.

Staff recommends a **yes** vote. To pass the motion, a majority vote of the Commissioners present is required. Approval of the motion has the effect of reinstating and finalizing the County’s decision of approval of the coastal permit.

3.0 Findings and Declarations

The Commission hereby finds and declares:

3.1 Grading During the Rainy Season

Both appeals contend that the proposed project could result in the transport of contaminated sediments into coastal waters because the County CDP allows grading to occur during the rainy season.

3.1.1 LCP Requirements

The LCP includes the following policies relevant to erosion control and grading:

- 2-11 All development, including agriculture, adjacent to areas designated on the land use plan or resource maps as environmentally sensitive habitat areas, shall be regulated to avoid adverse impacts on habitat resources. Regulatory measures include, but are not limited to, setbacks, buffer zones, grading controls... control of runoff.*
- 3-19 Degradation of the water quality of... nearby streams, or wetlands shall not result from development of the site. Pollutants... and other harmful waste shall not be discharged into or alongside coastal streams or wetlands either during or after construction.*
- 9-14 New development adjacent to or in close proximity to wetlands shall be compatible with the continuance of the habitat area and shall not result in a reduction in the biological productivity or water quality of the wetland due to runoff (carrying additional sediment or contaminants)....*

These LCP policies require that development be undertaken in a manner that will prevent the degradation of the quality and biological productivity of coastal waters and wetlands through increased sedimentation and soil erosion. These policies are particularly important for the proposed project due to the risk of transport of contaminated soils into sensitive habitat areas and coastal waters.

3.1.2 Discussion

The proposed site remediation project involves approximately 200-500 cubic yards of grading. None of the remediation sites are sloped; therefore, the erosion potential from these sites is minor. The applicant anticipates that grading will be completed in approximately five days. The RAP specifies that any excavated petroleum hydrocarbon contaminated soils that are not immediately removed from the site for disposal will be covered with plastic sheeting and surrounded by a berm. The RAP further specifies that any mercury contaminated soils that are stockpiled on the site prior to disposal will be stored in a lined container.

Although the County permit authorizes grading during the rainy season, it does so conditionally. To prevent impacts to wetlands and coastal waters, the County's CDP imposes Special Condition 28 as follows:

28. (WQ5) Water Quality. *A grading plan shall be designed to minimize erosion and shall include the following:*
- a. *Graded areas shall be revegetated within three weeks of final grading activities within a given area. Geotextile binding fabrics shall be used if necessary to hold slope soils until vegetation is established (also proposed by applicant).*
 - b. *Methods such as silt fencing and hay bales shall be used to reduce siltation into adjacent streams during grading and construction activities. Scheduling of construction shall be limited to the dry season (May through October) unless appropriate erosion control devices are installed (also proposed by applicant).*
 - c. *A 30-foot-wide buffer of undisturbed native vegetation from the top of bank and/or slope line as indicated on the Biological Enhancement Plan shall be maintained during construction. The edge of this buffer shall be delineated by vegetated buffers and/or rustic fencing.*

Plan Requirements and Timing: *The plan shall be submitted for review and approval by RMD [Resources Management Division] and Public Works prior to CDP. The applicant shall establish fencing and notify Permit Compliance prior to commencement of grading.*

Monitoring: *Permit Compliance will photo-document revegetation and ensure compliance with plan. Grading inspectors shall monitor technical aspects of the grading activities.*

The measures specified under Special Condition 28(b) are specifically intended to avoid impacts resulting from rainy season grading in consideration of the above cited LCP policies. This type of condition is common in previous Coastal Commission permits where grading may be allowed during the rainy season on moderate slopes with the implementation of appropriate erosion control measures. In fact, the Commission's approval of the overall ARCO Golf Course Project includes the Condition 28 requirements. The Commission's procedural guidance manual concerning polluted runoff (non-point source pollution) includes recommended best management practices (BMPs) designed to retain sediments on site during construction projects (CCC 1996). All of the measures required by the County are listed in the guidance manual as recommended BMPs, including:

- Create/retain buffer zones,
- Preserve existing vegetation/revegetate disturbed areas,

- Implement dust control measures,
- Install filter fabric/fence,
- Install straw bail barriers,
- Construct perimeter controls (i.e., fencing around construction sites), and
- Cover and dispose of debris spoils.

In support of their contention, the appellants further allege that County-approved erosion control plans have failed to prevent runoff of sediments in the Santa Barbara Shores Remediation, Glen Annie Golf Course, and the Haskell's Beach Hyatt Hotel projects.

The Santa Barbara Shores Remediation involved a significant quantity of grading (approximately 25,000 cubic yards) which was completed before the beginning of the 97/98 El Niño rainy season. The County experienced extremely high rainfall during the El Niño winter. More than half of the excavation for this project was within the bed of Devereux Creek. Devereux Creek, as all of the County's coastal streams) carried an unusually high volume of runoff due to the extreme rainfall in 97/98. However, the County's EQAP monitor did not detect significant erosion problems with the project (*Storrer pers. com. 1/12/99*).

The Glenn Annie Golf Course project (which is not located in the coastal zone) involved 515,000 cubic yards of grading on steep slopes. Revegetation was not completed on schedule for this project because the species required were not available at the time revegetation was required to commence. Therefore, no vegetation existed to hold the soil in place during the severe 97/98 rainy season.

The Haskell's Beach Hyatt Hotel project involved 443,000 cubic yards of grading on rolling hills, with steep creek slopes. Erosion problems at this site also occurred during last year's El Niño storms.

These projects can all be distinguished from the proposed ARCO remediation because (1) the ARCO project involves a much smaller quantity of grading, (2) grading for the ARCO project will not occur within creek beds or sloped terrain, and (3) the proposed cleanup project is expected to be completed within five days.

Additionally, ARCO has revised the remedial action plan to specify that no grading will occur seaward of the railroad tracks during the rainy season.

The Commission therefore finds that the proposed project, as conditioned by the County, does not raise a substantial issue under the County's certified LCP.

3.2 Use of the Herbicide Rodeo® under the Wetlands Mitigation Plan

Removal of contaminated soils at the Active Tank Farm and Former Tank Farm will impact approximately 4980 and 2600 square feet, respectively, of artificially created, disturbed wetlands

within the bermed containment areas surrounding the tank farm sites. Wetland conditions appeared in these areas due to soil compaction associated with removal of the oil and gas facilities, and an extraordinarily wet winter. In addition, removal of the concrete wall near Drainage #7 will impact approximately 3694 sq. ft (0.0848 acres) of artificially created, disturbed wetland.

To mitigate the impacts to all wetlands disturbed by remediation or abandonment activities, ARCO agrees to provide 1.5:1 onsite wetland restoration, enhancing 16,911 square feet of wetland in Tomate Canyon, on the western end of the site. The County's approval requires implementation of a Wetlands Revegetation/Enhancement Plan.

Nathan Post, Bob Keats, Tom Philips, and the Santa Barbara Chapter of the Surfrider Foundation contend that the use of the herbicide Rodeo® in the proposed wetlands mitigation project may adversely affect sensitive habitat.

3.2.1 LCP Requirements

The LCP includes the following policies relevant to the wetland mitigation plan:

- 2-11 All development, including agriculture, adjacent to areas designated on the land use plan or resource maps as environmentally sensitive habitat areas, shall be regulated to avoid adverse impacts on habitat resources. ...*
- 3-19 Degradation of the water quality of... nearby streams, or wetlands shall not result from development of the site. Pollutants... and other harmful waste shall not be discharged into or alongside coastal streams or wetlands either during or after construction.*
- 9-14 New development adjacent to or in close proximity to wetlands shall be compatible with the continuance of the habitat area and shall not result in a reduction in the biological productivity or water quality of the wetland due to runoff (carrying additional sediment or contaminants)....*

The above cited LCP policies require that development is undertaken in a manner that will prevent the degradation of the quality and biological productivity of coastal waters and wetlands. The appellants believe that the use of Rodeo® within the wetland habitat enhancement area will adversely affect the biological productivity and quality of the Tomate Canyon wetlands.

3.2.2 Discussion

The Wetlands Revegetation/Enhancement Plan (*Dudek 1998*) was approved by the County to mitigate the impacts of the proposed soil remediation project to wetland habitat. Implementation of the remediation project will impact 11,274 square feet of recently created wetlands at the former tank farm sites. The mitigation project proposes to enhance 16,911 square feet (1.5:1 ratio) of existing disturbed wetlands in Tomate Canyon within the Bixby Lease site. The habitat enhancement plan includes removal of invasive non-native plants and planting of native, wetland species. The plan specifies that under special circumstances Rodeo® may be used for weed control. The plan states specifically:

If weeds interfere with germination or revegetation coverage, the weeds will be removed (by hand pull/weed whip). Herbicide (specifically Rodeo) may be used, if acceptable, by the Revegetation Specialist, subject to the following guidelines:

- *Herbicide will not be used when standing water is present;*
- *Herbicide will not be used when the wind is greater than 5 miles per hour;*
- *Herbicide will not be used when rain is expected within 6 hours;*
- *Herbicide will be applied with a hand sprayer directly on the individual plants to be eradicated; and*
- *Herbicide storing, pouring, and refilling will be done outside sensitive areas.*

Pesticides, herbicides, fungicides and other chemicals can be toxic to sensitive wetland species. Use of such chemicals within a wetland is therefore questionable under the wetland protection policies of the LCP. However, Rodeo® is specifically designed for aquatic weed control, and is widely used for this purpose. Studies of the toxicity of Rodeo® in aquatic habitats have shown:

- “No acute toxicity hazards to aquatic environments would be expected during the course of normal usage.” (*Mitchell 1987*)
- “The use of Rodeo®... as a management tool in wetlands does not pose an acute hazard to native aquatic invertebrates....” (*Henry 1994*)

Rodeo® is the only herbicide certified by the U.S. EPA for use in wetlands because of its low toxicity to aquatic species, as documented in the studies cited above. The conditions required by the County concerning the use of Rodeo® are consistent with EPA recommendations. The proposed use of Rodeo® in the Wetlands Revegetation/Enhancement Plan has been reviewed and approved by the U.S. Fish and Wildlife Service and the California Department of Fish and Game. The Commission therefore finds that the proposed use of Rodeo® does not raise a substantial issue under the Santa Barbara County LCP.

3.3 Wetland Disturbance

By letter dated January 27, 1999, Ellison Folk, counsel for the appellants Nathan Post, Bob Keats, Tom Phillips, and the Santa Barbara Chapter of the Surfrider Foundation states that the January 15, 1999, staff recommendation on the appeal of the ARCO Dos Pueblos Canyon site remediation project failed to address wetland impact issues raised by the appellants. The letter proposes that the Commission should consider whether the temporary disturbance of delineated wetlands raises a substantial issue under the Santa Barbara County Local Coastal Program (LCP).

The project that is the subject of this appeal includes excavation of 200-500 cubic yards of contaminated soils. Excavation will disturb a total area of 11,274 square feet of artificially created, disturbed wetland habitat. To mitigate this impact, the applicants proposed in the original

remedial action plan to (1) restore the original grade of the excavated areas with clean fill, (2) revegetate the disturbed areas, and (3) enhance 16,911 square feet of nearby disturbed wetlands. In addition, ARCO has recently revised the plan to protect wetland habitat to:

- Clarify that the wetland habitat located at the former tank farm area will be restored and enhanced following soil remediation work in this area.
- Leave in place the concrete retaining wall originally proposed for removal and to correct site drainage to insure the continuation of the small wetland adjacent to the wall.
- Increase by 0.51 acre the wetland mitigation area.
- Include the mitigation measures contained in the May 3, 1999, biological assessment to protect the California red-legged frog and the tidewater goby.

The appeal submitted on November 30, 1998, includes the following statement:

“Implementation of the Remedial Action Plan (RAP) and additional abandonment activities would result in impacts to 11,274 square feet of disturbed wetlands. In order to offset impacts to wetlands, ARCO proposes to enhance 16,911 square feet of disturbed wetlands within Tomate Canyon. These wetlands currently support a large seasonal pond that is extremely important to wildlife. It is unclear what effect ARCO’s activities will have on this important resource. We are also concerned with the introduction of the Herbicide “Rodeo” into a sensitive habitat area.” [Emphasis added.]

The last sentence of this paragraph, concerning the use of an herbicide in the wetland enhancement area, raises a specific issue concerning how the project could affect wetland habitat. The staff report therefore considers whether the proposed use of the herbicide Rodeo® is consistent with the LCP.

In her letter, counsel for the appellants contends that the appeal also “addressed the wetlands disturbance issue.” However, the above-quoted passage from the appeal simply refers to the disturbance of wetlands as part of a factual description of the project but does not express any concern over this disturbance or articulate in any way how the disturbance is in conflict with the wetland protection policies of the LCP. The first of the three quoted sentences are simple factual statements concerning the County-approved project. The fourth sentence, beginning with “It is unclear...” “would appear to be an expression of concern over the effect of ARCO’s mitigation (wetlands enhancement) project on the Tomate Canyon wetlands and in particular on the “large seasonal pond” that comprises a substantial part of this wetland complex.

In response to Folk’s January 27, 1999, letter, staff sought clarification from the appellant of the grounds of his appeal. Nathan Post confirmed that the appeal is concerned with impacts of the proposed wetlands enhancement on the seasonal pond in Tomate Canyon (*Nathan Post, pers. comm. 2/2/99*). The substantial issue analysis of the staff report does not address whether this aspect of the enhancement project is in conflict with policies of the LCP.

The proposed wetlands enhancement involves removal of invasive exotic vegetation and planting native wetland species. This project is designed to improve the functional capacity of the Tomate Canyon wetlands. The staff is not aware of any evidence that the proposed enhancement would adversely impact these wetlands. Therefore, the enhancement project raises no substantial issue under the relevant policies of the LCP.

As discussed in Section 1.5.2 of the staff recommendation, on December 8, 1998, the Commission received a letter from the appellant Nathan Post stating that the appellants “wish to amend our appeal to include the following.” The letter lists additional grounds for appeal of the County permit, including (1) the identification of newly formed wetlands on the site constitutes new information and changed circumstances since the approval of the coastal development permit for the ARCO Dos Pueblos Golf Course project requiring a supplement to the EIR for the project and a new coastal development permit, (2) soil from the golf course project grading may not be available to back fill the remediation excavations because the golf course project grading plan has not been approved, and (3) that a conflict of interest exists because certain employees of ARCO’s remediation project consultant were previously employed by ARCO.

Section 13111(a) of the Commission’s regulations requires

An appeal of a local government’s decision on a coastal development permit application... must contain the following information:

...

(7) the specific grounds for appeal;

(8) a statement of facts on which the appeal is based;...

It necessarily and logically follows from the above-quoted regulatory provisions that, after the conclusion of the 10-day appeal period, the Commission may accept additional information concerning a timely filed appeal only insofar as such information serves to clarify or provide additional support for the grounds for appeal articulated in the original filing. The Commission cannot consider new grounds for appeal that are raised after the appeal period has run. The December 8, 1998, letter does not serve to clarify or provide additional support for the grounds raised in the original appeal (i.e., the use of Rodeo®, grading during the rainy season, and the effect of the mitigation (wetlands enhancement) project on the “large seasonal pond”), but seeks to add new grounds for appeal. Because these grounds were raised after the final day of the appeal period on November 30, 1998, these additional issues are not within the scope of the appeal before the Commission.

Notwithstanding this conclusion, the staff is of the view that the appellants’ additional grounds for appeal would not raise a substantial issue as to conformity with applicable policies of the LCP even if they had been interposed in a timely manner.

The relevant LCP policies concerning protection of wetland habitat include:

- 2-11 *All development, including agriculture, adjacent to areas designated on the land use plan or resource maps as environmentally sensitive habitat areas, shall be regulated to avoid adverse impacts on habitat resources. Regulatory measures include, but are not limited to, setbacks, buffer zones, grading controls... control of runoff.*
- 3-19 *Degradation of the water quality of... nearby streams, or wetlands shall not result from development of the site. Pollutants... and other harmful waste shall not be discharged into or alongside coastal streams or wetlands either during or after construction.*
- 9-6 *All diking, dredging, and filling activities shall conform with the provisions of Sections 30233 and 30607.1 of the Coastal Act. ...*
- 9-9 *A buffer strip, a minimum of 100 feet in width, shall be maintained in a natural condition along the periphery of all wetlands. No permanent structures shall be permitted within wetlands or buffer area except structures of a minor nature...*
- 9-14 *New development adjacent to or in close proximity to wetlands shall be compatible with the continuance of the habitat area and shall not result in a reduction in the biological productivity or water quality of the wetland due to runoff (carrying additional sediment or contaminants)....*

The County action subject to this appeal authorizes only removal of facilities, excavation of contaminated soils, restoration of remediation sites, and wetlands enhancement to mitigate the impacts of habitat disturbance. No permanent structures are authorized under the County's permit. Wetland areas will be avoided except where contaminated soils are proposed to be removed from within three delineated wetland sites. The project will disturb 11,274 square feet of delineated wetlands by excavation of contaminated soils.

In her letter, Folk contends that the proposed project is inconsistent with LCP Policy 9-6 because the project is not a restoration project and is therefore not an allowable wetland development as defined by Coastal Act Section 30233. Coastal Act Section 30233 limits diking, filling, and dredging of wetlands to specific types of development, among which are restoration and energy projects. The staff agrees that the remediation is not a restoration project. However, the proposed project is for the purpose of remediating soil contamination caused by oil production activities, and is a component of the abandonment of oil and gas production facilities. As an integral part of the abandonment of an oilfield, the remediation project is allowable under Coastal Act Section 30233 as an energy project.

Coastal Act Section 30233 further specifies that development qualifying as an allowable type in wetlands can only be permitted if there is no less environmentally damaging feasible alternative and if feasible mitigation measures are provided to minimize adverse environmental effects. The only alternative to the proposed wetland disturbance is to not remediate the contamination found in these wetland areas. This alternative would be contrary to the basic purpose of the project and would cause long-term environmental impacts. Avoiding the temporary disturbance of these

small, disturbed wetland areas by leaving in place contaminated soils is not a less environmentally damaging feasible alternative to the proposed remediation.

ARCO proposes to mitigate for wetland disturbance by (1) restoring the disturbed areas, and (2) enhancing 16,911 square feet of disturbed wetlands on site. The disturbed wetland areas will be restored to their original grade using clean soils of the same type as those removed, compacted as necessary, and seeded with native, wetland vegetation. In addition, ARCO will enhance existing disturbed wetland habitat within the project site at a ration of 1.5:1. These mitigation measures are appropriate to offset the impacts of the project as required by Coastal Act Section 30233.

The proposed soil remediation project is an allowable wetland development, there is no less environmentally damaging feasible alternative, and the project provides feasible mitigation measures to offset the impacts of the project. Therefore the temporary disturbance of wetlands that will result from the proposed project raises no substantial issues under the LCP.

APPENDIX A
SUBSTANTIVE FILE DOCUMENTS

CCC 1996, California Coastal Commission Procedural Guidance Manual: Addressing Polluted Runoff in the California Coastal Zone, 2nd Ed., June 1996.

Dudek 1998, ARCO Dos Pueblos Abandonment/Remediation Project Disturbed Wetlands Revegetation/Enhancement Plan for Santa Barbara County.

Henry 1994, Acute Toxicity and Hazard Assessment of Rodeo®, X-77 Spreader®, and Chem-Trol® to Aquatic Invertebrates, C. J. Henry, Arch. Environ. Contam. Toxicol. 27, 392-399 (1994).

Mitchell 1987, Acute Toxicity of Roundup® and Rodeo® Herbicides to Rainbow Trout, Chinook, and Coho Salmon, David G. Mitchell, Bull. Environ. Contam. Toxicol. (1997) 39:1028-1035.

APPENDIX B
STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the executive director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.